



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of, the Appeal of),
BARTHOLOMAE OIL CORPORATION)

Appearances:

For Appellant: Earl Killion, Attorney; A. F. Spatzier,
Certified Public Accountant

For Respondent: James J. Arditto, Franchise Tax Counsel.

O P I N I O N

This is an appeal under Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Bartholomae Oil Corporation against a Proposed assessment of additional tax under said Act of \$3,318.13 for the taxable year ended December 31, 1939, based upon income of the company for the year ended December 31, 1938.

Appellant is a California corporation engaged in the operation of oil wells in California and in gold mining operations in the Territory of Alaska. For the income year 1938, it suffered a loss of some \$90,000 from transactions carried on in the Fairbanks area of Alaska, which is in the fourth judicial division of the Territory of Alaska. Appellant allocated this loss to California, and claims that its action in so doing was authorized by Section 10 of the Bank and Corporation Franchise Tax Act, as amended in 1939*, providing that:

"Income from business carried on partly within and partly without the State shall be allocated in such a manner as is fairly calculated to apportion such income among the states or countries in which such business is conducted. Income attributable to isolated or occasional transactions in states or countries in which the taxpayer is not doing business shall be allocated to the state in which the taxpayer has its principal place of business or commercial domicil..." (emphasis added)

*The 1939 Amendment is applicable in the computation of the tax for the year 1939, even though measured by income for the year 1938. The amendment was made by Chapter 1050, Statutes of 1939, Section 2 of which provides: "This Act... shall be applied in the computation of taxes accruing subsequent to December 31, 1938." Under Section 4(7) of the Bank and Corporation Franchise Tax Act the tax "accrues on the first day of the taxable year,

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As Appellant was admittedly doing business in the second judicial division of Alaska, its contention cannot prevail unless, contrary to Respondent's position, the different judicial divisions of the Territory of Alaska are "states" or "countries" within the meaning of Section 10.

The four judicial divisions are created by Act of Congress, which provides:

"There is established a district court for the Territory of Alaska... The Court shall consist of four divisions, which shall also be recording divisions..." (48 U.S.C.A. Sec. 101, 41 Stats. 1203)

These divisions have been judicially held not to be subdivisions of the Territory of Alaska, but merely divisions of the district court for the Territory of Alaska. Thus, in United States v. Hoyt, 7 Alaska 276, the Court observed:

"It will be noted (referring to Sec. 363, Compiled Laws of Alaska, p. 249, establishing a district court) that the Territory is not subdivided into divisions, but that it is the Court that consists of four divisions, - which are also recording divisions." (emphasis added)

The Court in this case held that a change of venue from one division to another was properly ordered, notwithstanding the provisions of the Sixth Amendment to the United States Constitution, safeguarding to the accused, in a criminal prosecution, the right to a speedy and public trial, by an impartial jury "of the State and district wherein the crime shall have been committed..." The Court concluded that "district" as used in the Sixth Amendment means the entire Territory of Alaska in which there is only one district; the Court, however, consisting of four divisions.

In Spicer, The Constitutional Status and Government of Alaska (Johns Hopkins University Studies, Vol. 45), the author states:

"Although Alaska... is divided into four judicial divisions, with an established district court in each, the jurisdiction of each court extends over the entire Territory of Alaska." See United States v. Jerry Boy, 6 Alaska 379, holding that a grand jury in any division may indict a person for a crime committed anywhere in the Territory.

It is significant to note that jurisdiction of each division of the Court extends over the entire Territory, and is not limited to a particular division, comparable to our state courts, whose jurisdiction is limited to the particular state in which the court functions. It is true that the judicial divisions are used for certain purposes other than as divisions of the district court for the Territory of Alaska. Thus they are used, comparably to our Senate and Assembly Districts, for the purpose of electing representatives to the Territorial Legislature, but there is no county organization in Alaska.

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"For the purpose of electing these representatives (to the Territorial Legislature) no political divisions, other than the four judicial divisions, have been established by law in Alaska. Thus the eight senators and sixteen representatives of the Alaskan legislative assembly are elected at large from the four judicial divisions, all necessity for County organization being in this way avoided." Spicer, Constitutional Status and Government of Alaska, supra.

"There is no county in the Territory of Alaska, never has been any such organization, and the only organization that there is are the recording divisions which the various courts are authorized to establish." United States v. Hoyt, supra. See 48 U.S.C.A. Secs. 68 and 69, providing for the selection of the members of the Alaska Senate and House of Representatives.

The following quotation from General Information Regarding Alaska, 1941, issued by the Alaska Planning Council, is pertinent here:

"Limited legislative power is vested in the Legislature consisting of a House and Senate...There is no County form of government. The Territory is divided into four divisions, regardless of population...

"The District Court of the United States for Alaska consists of four divisions, each of which has a full quota of officials and operates substantially as a separate or independent Court. The, jurisdiction of each division, however, extends throughout the Territory...

"The judiciary functions under both Federal and Territorial statutes, having equal authority under both. There is no system of Territorial courts. Municipal courts are established in incorporated towns, having jurisdiction only Over cases arising from violations of city ordinances."

As already noted, the judicial divisions are also recording divisions and are used in connection with the election of members of the Territorial Legislature, Certainly this fact does not warrant regarding them as "states" or "countries;" Appellant, however, urges that because foreign corporations:

"are required to qualify in each judicial district places each judicial division insofar as doing business is concerned in the same position as the forty-eight states of the United States, even though the Territory as a whole comes under the same laws, rules and regulations, and also administrative and executive officers such as one Attorney General for the Territory and one Governor, etc." (P.2, Appellant's Closing Brief)

With this we cannot agree. It is true that

"No Corporation . . organized under the laws of the United States, or the laws of any State or Territory of the

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United States other than the Territory of Alaska, or the laws of any foreign country, shall do or engage in business within the Territory of Alaska without first having filed in the Office of the Auditor of the Territory of Alaska and in the Office of the Clerk of the District Court for the judicial division wherein it intends to do or engage in business, the following papers, viz.:

"(a) A duly authenticated copy of the Charter or articles of incorporation of such corporation or company, and of any amendments thereto . . ."
(Sec. 931, Compiled Laws of Alaska, 1933, as amended by Chapter 89, Alaska Session Laws, 1935, page 185.)

It should be noted that the papers required to be filed in each judicial division are also required to be filed in the Office of the Auditor of the Territory of Alaska. The requirement of filing in each judicial division appears to us comparable to the requirement of Section 405 of the Civil Code requiring of foreign corporations the filing of copies of articles of incorporation with the county clerk of the county in which the principal office of the corporation is located, and in which the corporation owns real property. In both Alaska and California, the foreign corporation must file with the proper official of the Territory **or** State, as the **case** may be.

We think enough has been said to show that the judicial divisions of **Alaska** are not "**states**" or "**countries**" within the meaning of Section 10 of the Bank and Corporation Franchise Tax Act.

We conclude, therefore, that Appellant was doing business in the state or country, i.e., Alaska, in which the transactions resulting in the loss were carried on.

It follows that the action of Respondent was correct, regardless of whether or not the transactions resulting in the loss were "**isolated and occasional**" and it becomes unnecessary for us to pass upon this point.

We are of the opinion, accordingly, that **the action** of the Commissioner in overruling the Appellant's protest against the proposed assessment of additional tax in the amount of \$3,318.13 for the taxable year ended December 31, 1939, should be sustained.

O R D E R

Pursuant to the views **expressed** in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Honorable Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Bartholomae Oil Corporation to his proposed assessment of additional tax in the amount of \$3 318.13 for the taxable year ended December 31, 1939, based upon the income

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of the corporation for the year ended December 31, 1938, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby affirmed.

Done at Sacramento, California, this 15th day of July, 1943,
by the State Board of Equalization.

R. E. Collins, Chairman
J. H. Quinn, Member
George R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary